



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590



OCT 07 2009

REPLY TO THE ATTENTION OF:

Robert M. Currie
Detrex Corporation
P.O. Box 511
Southfield, Michigan 48086-5111

RE: Detrex Environmental Covenant

Dear Bob:

Enclosed is an executed copy of the environmental Covenant for the Detrex property. Please have it recorded and send me a copy of the recorded covenant.

If you have any questions, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Peter Felitti".

Peter Felitti

Enclosure

cc: Leah Evison, SR-6J (w/o enclosure)
Thomas W. Steib (w/o enclosure)
Detrex Corporation
1100 N. State Road
Ashtabula, OH 44004

6/18/09

ENVIRONMENTAL COVENANT

This Environmental Covenant is made as of the _____ day of _____, 2009, by Detrex Corporation (Owner) pursuant to Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92 for the purpose of subjecting its Facility at 1100 North State Road, Ashtabula, Ohio (Facility) and the Restricted Area (described below) to the activity and use limitations and to the rights of access described below.

Whereas, pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, the United States Environmental Protection Agency ("EPA"), placed the Fields Brook Superfund Site ("Site") on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register, 48 Fed. Reg. 40658 (September 8, 1983);

Whereas the Site consists of Fields Brook Superfund Site (Site), its tributaries and any surrounding areas which contribute, potentially may contribute, or have contributed to the contamination of the brook and its tributaries. The Site is a multi-source site and involves multiple media, including soil, sediment groundwater and surface water. The EPA divided the site into three Operable Units (OU) associated with the Site. The Sediment OU (OU-1) involves cleanup of contaminated sediment in Fields Brook and tributaries, the Source Control OU (OU-2) involves cleanup of sources of contamination to Fields Brook cleanup of sources of contamination to Fields Brook to prevent recontamination of the brook and the Floodplain/Wetland (OU-4) involves cleanup of soils and sediment in the 100-year floodplain. The Detrex Facility (Facility) was one of the five industrial properties that were identified as potential sources of contamination to Fields Brook for the Source Control OU. In 1989, EPA issued a Unilateral Order to the PRP Group to design a remedy for sediments complete a Remedial Investigation for sources and evaluate clean up alternatives.

Whereas, in a Source Control Remedial Investigation Report approved in May 1997, the five industrial properties including the Detrex Facility where identified as source control areas. In addition, a Source Control Feasibility Study was completed and finalized in June 1997. This report described screening of alternatives, remedial alternatives and an analysis of alternatives.

Whereas, EPA issued a Record of Decision (ROD) for OU-2 on September 29, 1997 for selecting final remedial action for the Fields Brook Site. As part of this ROD, EPA evaluated the following alternatives to address soil and groundwater contamination at the Detrex Facility: No Action, Containment / DNAPL Collection Trench / Treatment, Hydraulic Containment / DNAPL Collection Wells / Treatment, Downgradient Containment / DNAPL Collection Wells / Treatment.

Whereas, EPA selected a remedy for the Detrex Facility, which required the containment and treatment of groundwater contamination by the construction of a partial slurry wall, groundwater collection trench, vacuum enhanced extraction wells, surface soil containment, ditch cleaning, catalyst pile removal and retention pond sediment removal. On December 24, 1997 EPA issued

Detrex a Unilateral Administrative Order (UAO) for Detrex to undertake the remedy selected. Detrex agreed to comply with the UAO.

Whereas, EPA required the Detrex Facility to install an additional groundwater collection trench in 2006. Detrex has operated the collection trench since 2006 and no free DNAPL has been observed.

Whereas, EPA required Detrex to provide an update Operations and Maintenance Plan in 2008 to address effectiveness of the vacuum enhanced DNAPL recovery wells. Detrex provided an updated O&M Plan that described an alternate to vacuum recovery using small diameter recovery wells.

Whereas, as described in the Source Control Remedial Investigation Report, the following description of the Facility and sources have been described. The Detrex Facility is located in the northwestern portion of the Fields Brook watershed adjacent to the north bank of the main channel of Fields Brook. The facility encompasses approximately 57 acres. Structures on the property include a process building, office building, and numerous aboveground storage tanks that are either within diked areas, paved areas, or on ground surfaces. The northern one-third of the property is used as an active manufacturing area and the southern two-thirds are largely undeveloped.

The Detrex facility currently produces zinc dialkyldithiophosphates and hydrochloric acid. Past operations include n-methyl pyrrole and pyrrole reactions. These are then distilled to give n-methyl and pyrrole as product and hazardous still bottoms. Other Past operations at this plant included the chlorination of acetylene to produce trichloroethene and tetrachloroethane. The chemicals of interest at Detrex from past operations include furan, monomethyl amine, n-methyl pyrrole (NMP), pyrrole ammonia, 1,1,2,2-tetrachloroethane, hexachlorobutadiene (HCBT), and tetrachloroethane.

Results from sampling conducted during the SCRI indicate that surface soil exceedances for CUG compounds were identified in several areas of the Detrex facility. These areas include:

- The stormwater collection ditch on the northern property line;
- Several abandoned retention Ponds;
- Construction debris piles;
- Sediment in the stormwater settling collection basin; and
- A catalyst pile.

In addition, the results of the Recontamination Assessment and identification of dense Non-Aqueous Phase Liquid (DNAPL) indicated that the following areas should be addressed to reduce possible sources of future contamination to Fields Brook Superfund Site.

1. Seven Closed Lagoons

The closed lagoons area located in the northeastern portion of the Detrex facility. Subsurface soil samples collected from the area surrounding the lagoons were found to contain several volatile and semi-volatile organic compounds at concentrations exceeding occupational CUGs. DNAPL was identified in the shallow groundwater bearing formation both in the closed lagoon area and at off-site

locations north of DET1, on RMI Sodium property. A sample of DNAPL was collected from one of the on-site monitoring wells in order to characterize this material. Four volatile organic compounds were identified (1,1,2,2-tetrachloroethane, 1,2-dichloroethene tetrachloroethane and trichloroethene). Three semi-volatile organic compounds were identified (hexachlorobeneze, hexachlorobutadiene, and hexachloroethane). Based on existing Phase I data and, the delineation borings, the DNAPL impact extends in a radial pattern from the closed lagoon area and encompasses an estimated subsurface area of approximately 500,000 sq. ft. (11.5 acres). Based on data collected to-date, the DNAPL impact is migrating toward the northwest, consistent with groundwater flow and the structure of the top of the underlying till layer.

2. Sources Within the Surface Water Treatment System

The surface drainage system in the northern industrialized portion of the Detrex facility has been modified to collect and treat surface water. Of the area within the bounds of the surface water treatment system, approximately 60,000 sq. ft of surface area has soil CUG exceedances. The ponded area in the lagoon area covers approximately 4,000 sq. ft. In addition, approximately 1,500 sq. ft. along the drainage ditch has surface soil CUG exceedances. The area that is located within the bounds of the surface drainage system is underlain by the subsurface DNAPL impacts.

3. Sources Outside the Surface Water Collection System

In the Phase I SCRI Report, the catalyst piles were not considered a potential source of sediment recontamination. A surface soil sample located down slope of the floodplain detected a concentration of 40.4 ppm, PCBs. Subsequent sampling of the catalyst material has indicated the presence of PCBs greater than occupational CUGs for the Fields Brook sediment. Additional sampling of the three catalyst piles indicated PCB concentrations ranged from 2 to 5 ppm. Since the catalyst piles are in close proximity to Fields brook, U.S. EPA requested that the catalyst piles be considered in the Fields Brook.

Whereas, the parties hereto have agreed: 1) to grant a permanent right of access over the Facility to the EPA for purposes of implementing, facilitating and monitoring the remedial action, and 2) to impose on the Facility activity and use limitations as covenants that will run with the land for the purpose of protecting human health and the environment; and

Now therefore, Owner and EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant executed and delivered pursuant to §§ 5301.80 to 5301.92 of the Ohio Revised Code.

2. Facility. The real property which contains 57.74 acres located in Ashtabula County, Ohio (the "Facility") which is subject to the environmental covenants set forth herein is described on Exhibit A attached hereto and hereby by reference incorporated herein. The Facility is shown on the survey map (the "Map") attached as Exhibit B, as prepared by Norman Hoovler, Register Surveyor No. 8259.

3. Owner. Detrex Corporation ("Owner"), a Michigan based corporation is the owner of the Facility. Detrex Corporation is located at 1100 North State Road, Ashtabula, Ohio.

4. Activity and Use Limitations on the Facility.

- (a) Owner agrees not to permit the Facility to be used in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial action which has been implemented or which will be implemented pursuant to the Source Control OU-2 ROD unless the written consent of the EPA to such use is first obtained.
- (b) Owner covenants that the Facility shall be used solely for Commercial/Industrial Activities only. The Facility shall not be used for Residential and Other Prohibited Activities. The term "Commercial/Industrial Activities" includes: (i) wholesale and retail sales and service activities including, but not limited to retail stores, and automotive fuel, sales and service facilities; (ii) governmental, administrative and general office activities; (iii) manufacturing, processing, and warehousing activities, including, but not limited to, production, storage and sales of durable goods and other non-food chain products; and (iv) activities which are consistent with or similar to the above listed activities; together with related parking areas and driveways, but excludes Residential and Other Prohibited Activities. The term "Residential and Other Prohibited Activities" includes: (i) single and multi-family dwellings and transient residential units; (ii) day care centers and preschools; (iii) public and private elementary and secondary schools; (iv) hospitals, assisted living facilities and other extended care medical facilities and medical and dental offices; (v) food preparation and food service facilities, including food stores, restaurants, banquet facilities and other food preparation or sales facilities; and (vi) indoor or outdoor entertainment and recreational facilities.
- (c) Owner covenants and assigns that there shall be no consumptive use of groundwater, either on or off the Facility.
- (d) Owner covenants that other Institutional Controls will be implemented for any area of the Facility that were described in the ROD where hazardous substances, pollutants or contaminants will remain above levels that allow for unlimited use and unrestricted exposure. More specifically, Institutional Controls will be implemented to protect the cover system, drainage control slurry walls, extraction and monitoring wells. Such institutional controls will include this environmental covenant, security fencing, signs and restrictions on the placement of wells.

5. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Facility or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

6. Requirements for Notice to EPA Following Transfer of a Specified Interest in, or Concerning Proposed Changes in the Use of, Applications for Building Permits for, or Proposals for any Site Work Affecting Contamination on, the Facility. Owner shall not transfer any interest in the Facility or make proposed changes in the use of the Facility, or make applications for building permits for, or proposals for any work in the Facility without first providing notice to EPA and

obtaining any approvals or consents thereto which are required under Sections VII, VIII, X or XIII of the Consent Decree.

7. Access to the Site. Pursuant to Section XVI of the UAO, Owner agrees that EPA and its respective officers, employees, agents, and contractors (collectively, "Access Grantees") shall have and hereby grants to each of them an unrestricted right of access to the Facility to undertake the Permitted Uses described in Paragraph 8 below and, in connection therewith, to use all roads, drives and paths, paved or unpaved, located on the Site or off the Site ("off-site") and rightfully used by Owner and Owner's invitees for ingress to or egress from portions of the Site (collectively, "Access Roads"). The right of access granted under this Paragraph 7 shall be irrevocable while this Covenant remains in full force and effect.

8. Permitted Uses. The right of access granted under Paragraph 7 of this Environmental Covenant shall provide Access Grantees with access at all reasonable times to the Facility, or such other property, for the purpose of conducting any activity related to the UAO or the purchase of the Facility, including, but not limited to, the following activities:

- a) Monitoring the Work;
- b) Verifying any data or information submitted to the United States or the State;
- c) Conducting investigations relating to contamination at or near the Facility;
- d) Obtaining samples;
- e) Assessing the need for, planning, or implementing response actions at or near the Facility;
- f) Implementing the Work pursuant to the UAO;
- g) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Owner or her agents, consistent with Section XVI (Access to Information) of the UAO;
- h) Determining whether the Facility or other property is being used in a manner that is prohibited or restricted or that may need to be prohibited or restricted by or pursuant to the UAO; and
- i) Surveying and making soil tests of the Facility, locating utility lines, and assessing the obligations which may be required by EPA.

9. Administrative Record.

- (a) Owner is a member of Fields Brook PRP Group and one of the Defendants in an action filed by EPA under federal programs governing environmental remediation of the Site under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. On September 29, 1997, EPA issued a Record of Decision (ROD) which set forth EPA's

determination of the appropriate remedial action to be implemented at the Facility to address Facility contamination. Pursuant to this ROD, EPA approved a Remedial Design and Remedial Action work plan which has been implemented as described in the fourth "Whereas" clause at the beginning of this instrument. EPA's ROD was based upon an administrative record. Copies of the EPA administrative record for the Fields Brook Superfund Site are maintained at the following locations: EPA Region 5; Superfund Records Center (7th Floor); 77 W. Jackson; Chicago, Illinois 60604; and Ashtabula County Library, 335 West 44th Street, Ashtabula, Ohio.

- (b) Owner has agreed to provide the Institutional Controls with respect to the Facility that are set forth in this Environmental Covenant. Owner has executed and delivered this Environmental Covenant to satisfy and implement agreements to provide such institutional controls under the 1997 OU-2 ROD and as herein provided.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Facility or any portion of the Facility shall contain a notice of the activity and use limitations, and grants of access set forth in the Environmental Covenant, and provide the recorded location of this Environmental Covenant. For instruments conveying any interest in the Facility, the notice shall be substantially in the form set forth in Exhibit C. For instruments conveying any interest any interest in the Facility or any portion thereof, the notice shall be substantially in the form set forth in Exhibit H.

11. Amendments; Early Termination. This Environmental Covenant may be modified or amended or terminated while Owner owns the property only by a writing signed by Owner and, EPA with the formalities required for the execution of a deed in Ohio which is recorded in the Office of the Recorder of Ashtabula County, Ohio. Upon transfer of all or any portion of the Facility, Owner waives any rights that they might otherwise have under Section 5301.90 of the Ohio Revised Code to withhold their consent to any amendments, modifications, or termination of this Environmental Covenant, to the extent that they have transferred their interest in that portion of the Facility affected by said modification, amendment or termination. The rights of Owner's successors in interest as to a modification, amendment or termination of this Environmental Covenant are governed by the provisions of Section 5301.90 of the Ohio Revised Code.

12. Other Matters.

- (a) Representations and Warranties of Owner. Owner represents and warrants; that Owner is the sole owner of the Site; that Owner holds fee simple title to the Site which is free, clear and unencumbered except for the UAO; that Owner has the power and authority to make and enter into this Agreement as Owner to grant the rights and privileges herein provided and to carry out all obligations of Owner hereunder; that this Agreement has been executed and delivered pursuant to the ROD and UAO; and, that this Agreement will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.

- (b) Right to Enforce Agreement Against Owner; Equitable Remedies. In the event that Owner should attempt to deny the rights of access granted under Paragraph 7 or should violate the restrictions on use of the Site set forth in Paragraph 4, then, in addition to any rights which EPA may have under the UAO, EPA shall have the right to immediately seek an appropriate equitable remedy and any court having jurisdiction is hereby granted the right to issue a temporary restraining order and/or preliminary injunction prohibiting such denial of access or use in violation of restrictions upon application by EPA without notice or posting bond. Owner and each subsequent owner of the Site by accepting a deed thereto or to any part thereof waives all due process or other constitutional right to notice and hearing before the grant of a temporary restraining order and/or preliminary injunction pursuant to this Subsection 13(b).
- (c) Future Cooperation; Execution of Supplemental Instruments. Owner agrees to cooperate fully with EPA and to assist it in implementing the rights granted under this Environmental Covenant and, in furtherance thereof, agrees to execute and deliver such further documents as may be requested by EPA to supplement or confirm the rights granted hereunder.
- (d) Cumulative Remedies; No Waiver. All of the rights and remedies set forth in this Environmental Covenant or otherwise available at law or in equity are cumulative and may be exercised without regard to the adequacy of, or exclusion of, any other right, remedy or option available hereunder or under the Consent Decree or at law. The failure to exercise any right granted hereunder, to take action to remedy any violation by Owner of the terms hereof or to exercise any remedy provided herein shall not be deemed to be a waiver of any such right or remedy and no forbearance on the part of EPA and no extension of the time for performance of any obligations of Owner hereunder shall operate to release or in any manner affect EPA's rights hereunder.
- (e) Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
- (f) Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Facility, with the Ashtabula County Recorder's Office.
- (g) Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Facility with the Ashtabula County Recorder.
- (h) Distribution of Environmental Covenant/Other Notices. The Owner shall distribute a file-stamped and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA, Ashtabula County. All notices, requests, demands

or other communications required or permitted under this Environmental Covenant shall be given in the manner and with the effect set forth in the Consent Decree.

- (i) Notices – All notices, requests, demands or other communications required or permitted under this Environmental Covenant shall be given in the manner and with the effect set forth in the 1997 OU-2 ROD.
- (j) Governing Law. This Environmental Covenant shall be construed according to and governed by the laws of the State of Ohio and the United States of America.
- (k) Captions. All paragraph captions are for convenience of reference only and shall not affect the construction of any provision of this Environmental Covenant.
- (l) Time of the Essence. Time is of the essence of each and every performance obligation of Owner under this Environmental Covenant.

[SIGNATURE PAGE TO FOLLOW]

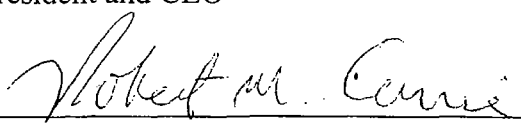
IN WITNESS WHEREOF, Owner and EPA have executed and delivered this Environmental Covenant as of the date first above written.

OWNER

Detrex Corporation
Thomas E. Mark and Robert M. Currie



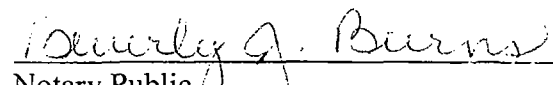
Thomas E. Mark
President and CEO



Robert M. Currie
Vice President, General Counsel and Secretary

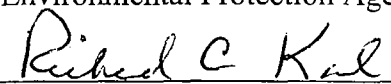
MICHIGAN
STATE OF ~~OHIO~~)
) SS.
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 17TH day of AUGUST, 2009, by Detrex Corporation, Robert M. Currie and Thomas E. Mark.



Notary Public

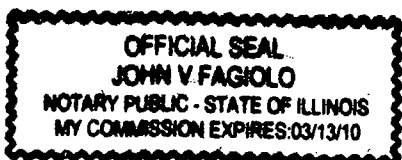
UNITED STATES OF AMERICA
On behalf of the Administrator of the
United States Environmental Protection Agency

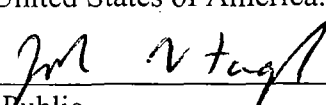
By: 

Director,
Superfund Division, Region 5

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 6TH day of OCTOBER, 2009, by RICHARD C. KARL, Director, Superfund Division, Region 5 of the United States Environmental Protection Agency, on behalf of the United States of America.





Notary Public

EXHIBIT A

Legal Description of the "Facility"

The following is a legal description of the 57.74 acres of land surveyed by Norman R. Hoover, Reg. Surveyor No. 8259.

Situated in the Township of Ashtabula, County of Ashtabula, and State of Ohio, and being part of the Holmes Tract, in said Ashtabula Township, and being further and described as follows:

Beginning at a point at the centerline of State Road, (60 feet wide,) and Middle Road, (60 feet wide);

Thence along the centerline of State Road, North $00^{\circ}39'00''$ West, a distance of 670.07 feet, to a point:

Thence continuing along the centerline of State Road, North $00^{\circ}03'00''$ West, a distance of 1123.60 feet to a point on the centerline of State Road, and being The Principal Place of Beginning;

Thence continuing along the centerline of State Road, North $00^{\circ}03'00''$ West, a distance of 399.96 feet, to an angle point on the centerline of State Road;

Thence continuing along the centerline of State Road, North $00^{\circ}03'05''$ West, a distance of 275.56 feet, to an angle point on the centerline of State Road;

Thence continuing along the centerline of State Road, North $00^{\circ}29'15''$ West, a distance of 845.94 feet, to a point on the centerline of State Road, and being the northwest corner of the Detrex property;

Thence along the northerly line of Detrex, North $89^{\circ}49'10''$ East, a distance of 1625.75 feet, to the westerly line of New York Central Railroad Company;

Thence along the westerly line of the New York Central Railroad Company, and also the easterly line of Detrex, South $00^{\circ}28'15''$ West, a distance of 643.39 feet, to a point along the easterly line of Detrex;

Thence along the easterly line of Detrex, South $00^{\circ}44'35''$ West, a distance of 955.45 feet, to a concrete monument;

Thence along the southerly line of Detrex, North $87^{\circ}23'30''$ West, a distance of 1601.80 feet, to The Principal Place of Beginning, and containing 57.74 acres of land, of which 1.047 acres is in the roadway right-of-way, by Norman R. Hoovler, Professional Surveyor, No. 8259.

EXHIBIT B
Survey Map

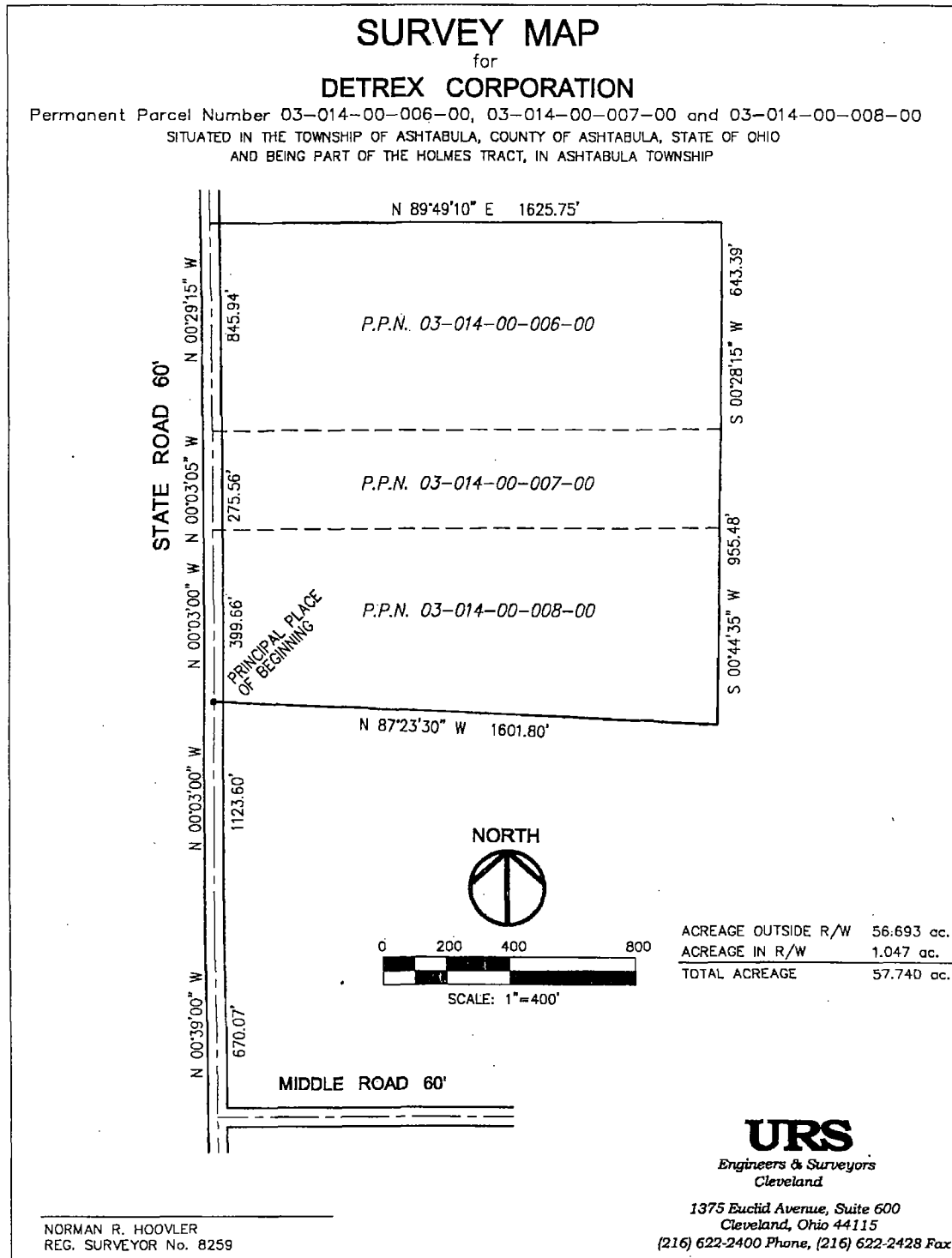


EXHIBIT C

Notice upon Conveyance of Facility

THE INTEREST CONVEYED HEREBY RESTRICTS THE INTEREST CONVEYED AS SET FORTH IN THIS NOTICE AND AN ENVIRONMENTAL COVENANT, DATED _____, 200_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE ASHTABULA COUNTY RECORDER ON _____, 200_, in BOOK _____, Page _____, THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

Activity and Use Limitations on the Facility.

- (a) The Site shall not be used in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial action which has been implemented or which may be modified pursuant to the Source Control OU-2 ROD unless the written consent of the EPA to such use is first obtained. The Facility shall be used solely for Commercial / Industrial activities and not be used for Residential or Other Prohibited Activities.
- (b) There shall be no consumptive use of Facility groundwater, either on or off the Facility.